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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JAMES R.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES et al.,

Real Parties in Interest..

B162200

(Los Angeles County
Super. Ct. No. BK00186)

ORIGINAL PROCEEDING in mandate. Debra L. Losnick, Temporary Judge.
(Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

James R., in pro. per., for Petitioner.

No appearance for Respondent.

Lloyd W. Pellman, County Counsel, and Lisa Proft, Deputy County Counsel, for
Real Party in Interest Los Angeles County Department of Children and Family
Services.

Petitioner James R. is the father of six-year-old Ginger R., who was declared a dependent child of the juvenile court. In October 2002, more than two years after Ginger was first removed from her father's home, and after the father had received more than 18 months of reunification and family maintenance services, the juvenile court set a hearing for the selection and implementation of a permanent plan for Ginger. (Welf. & Inst. Code, §366.26.)¹ The father seeks writ relief (Cal. Rules of Court, rule 39.1B) from the juvenile court's order, claiming the court should have ordered additional reunification services because he received no services while he was in jail during the first six months after Ginger was detained. We conclude the juvenile court properly declined to order additional reunification services. Accordingly, we deny the petition.

FACTUAL AND PROCEDURAL HISTORY

Ginger was born in July 1996. In June 2000, the Department of Children and Family Services (Department) detained Ginger at her mother's place of residence after receiving reports that the mother had physically and emotionally abused her children and after the mother tested positive for PCP.² The Department placed Ginger with the father, who resided with his mother, and filed a dependency petition (§ 300), alleging among other things that Ginger's mother's drug use posed a risk to Ginger. The petition contained no allegations against the father.

At the conclusion of a detention hearing, the juvenile court released Ginger to her father. In July 2000, however, the father was arrested for violating parole after he was

¹ All undesignated statutory references are to the Welfare and Institutions Code.

² The mother was not married to the father and was not living with him when Ginger was detained. Prior to her detention, Ginger would spend weekdays with her mother and weekends with her father. The mother is not a party to this writ proceeding.

involved in a physical altercation while intoxicated. The Department again detained Ginger, placed her in foster care, and filed an amended dependency petition on July 24, 2002, alleging among other things that the father had a history of illegal drug use, domestic abuse and other violent behavior, and was a registered sex offender.³

A hearing took place the day the Department filed its amended petition. Although incarcerated, the father was present at the hearing. The court sustained the amended petition, and over the Department's objections placed Ginger with the paternal grandmother. The court ordered, however, that the father not be permitted to live with his mother or visit Ginger in the paternal grandmother's home.

At the conclusion of a disposition hearing on August 7, 2000, the court ordered the Department to provide the father with family reunification services.⁴ The court ordered the father to participate in individual counseling to address anger management and sex abuse issues, as well as to participate in parenting and anger management programs. The court rejected a request by the Department to move Ginger from the paternal grandmother's home to the home of another relative.

On January 8, 2001, the father, incarcerated since mid-July 2000, was released from jail and moved into a motel. Later that month, he enrolled in a parenting class, a

³ According to the amended petition, after the father was arrested, the Department learned that both he and his mother had concealed important information about the father's history from a Department social worker. For this reason, and because the Department did not believe the paternal grandmother could protect Ginger from the father, the Department decided not to leave Ginger with the paternal grandmother after the father's arrest. According to the petition, various relatives were unwilling to have Ginger placed with them because of their fear of the father.

⁴ The court ordered that no services be provided to Ginger's mother.

substance abuse program, and counseling to address sexual abuse. He also began monitored visits with Ginger.

At the conclusion of the six month review hearing (§ 366.21, subd. (e)) on March 29, 2001, the court found reasonable reunification services had been provided.⁵ The court also found there was a reasonable probability Ginger could be returned to the father's custody within the next six months and ordered the Department to provide additional services. Although the court ordered the father not to live with his mother and Ginger, it authorized him to visit Ginger in his mother's home under the paternal grandmother's supervision.

In September 2001, the Department reported the father had completed his parenting and substance abuse programs, but was still receiving sexual abuse counseling. However, he had stopped seeing his individual counselor and was attempting to enroll in another individual counseling program. The father, who still resided in a motel, continued to have weekly monitored visits with Ginger. The Department recommended that the court order additional reunification services and permit the father to move back in with his mother.

At the 12-month review hearing (§ 366.21, subd. (f)) on September 27, 2001, the court again found that reasonable services had been provided and that the father had substantially complied with the case plan. The court found returning Ginger to the father would create a substantial risk of detriment to her physical/emotional well being, but also found there was a reasonable probability Ginger could be returned to the father's custody within the next six months. The court ordered additional reunification services for the father and authorized him to move in with his mother and Ginger. The court scheduled an 18-month review hearing (§ 366.22) for January 14, 2002.

⁵ Nothing in the record indicates the father claimed he had not received reasonable services.

In anticipation of the 18-month review hearing, the Department reported Ginger was doing well in the paternal grandmother's home. The Department maintained the father was in partial compliance with the case plan.⁶ The Department recommended that Ginger remain a dependent of the court, but that she be returned to the father's custody on condition he enroll and participate in individual counseling.

At the January 14, 2002 hearing, the court ordered Ginger returned to the father's custody and ordered the Department to provide family maintenance services.⁷ The court also ordered the father to continue with counseling, scheduled a review hearing for January 2002, and directed the Department to include in its report for that hearing an assessment whether court jurisdiction should be terminated.

In early April 2002, the Department learned the father was abusing prescription drugs and had been involved in several incidents of inappropriate behavior. The Department's suspicions were aroused when the father called a Department social worker to complain about a report she had written in connection with a recent section 388 petition filed by Ginger's maternal grandmother. During the conversation, the father's speech appeared slurred. The social worker, together with an intern, visited the father the same day. During the visit, the father appeared unsteady on his feet, had trouble remembering names, was unable to write a name and number he requested, offered the social worker and intern some of the pain medication he was taking, embraced and kissed the social worker, and made a pass at the intern.

⁶ The Department believed he was not in full compliance because he had not been attending individual counseling as previously ordered.

⁷ Contrary to the Department's assertion in its answer to the petition, the court's order returning Ginger to her father's custody was not against the Department's recommendation. Indeed, it was in accordance with that recommendation.

The following day, the father called the social worker and his speech again sounded slurred. The same day, an anonymous caller told the social worker that the father had been taking pills for a week and had lied to his physician to obtain more pills. The caller reported that the physician advised the father he would no longer see him because of his behavior.

The same caller also reported the police had visited the father the day before upon receiving a call from someone at Ginger's school complaining that the father was acting inappropriately at the school. The police were called because the father was hugging people at school, was being overly friendly, appeared to be under the influence, and had scared some of the parents and faculty.⁸

On April 4, 2002, during a telephone conversation with a Department social worker, the father resisted undergoing a drug test, and his speech sounded slurred. The following day, the Department detained Ginger and placed her in foster care. Several days later, the father called a Department social worker and complained about Ginger's detention. His speech sounded slurred and he repeatedly used expletives. He also said one of the Department's social workers, whom he identified by name, was "going to pay."

On April 10, 2002, the Department filed a supplemental petition under section 387, alleging the father was under the influence of prescription drugs to such an extent that he was unable to care for Ginger. At a hearing that day, the court authorized Ginger's

⁸ A few days later, the social worker confirmed the accuracy of the anonymous reports when she spoke with a school official and with the physician who had prescribed pain medication to the father. The social worker also learned that, on April 3, 2002, a deputy in the juvenile court had to ask the father to leave after an "incident" that took place in the courthouse the day before, when the father appeared for a hearing on the maternal grandmother's section 388 petition.

continued detention and placement in foster care. The court authorized the father to have monitored visits.

On May 3, 2002, the court sustained the amended petition and ordered Ginger to remain in foster care.

In late May 2002, Ginger advised a Department social worker that she was “afraid of boys and men because of my daddy.” Ginger claimed the father hit and yelled at her when she was bad and her father sometimes hit her paternal grandmother. Ginger said she did not provide this information earlier because she was afraid that if she did, the father would return to jail. Ginger denied her father had ever hurt her or made her feel uncomfortable.

In late May 2002, the Department received a report the father had threatened Ginger’s foster parents, prompting them to request Ginger’s immediate replacement. Just prior to the incident, Ginger began screaming when she saw her father. Ginger was placed in another foster home, but was later returned to the former foster parents, with whom she had bonded. The Department social worker subsequently received an anonymous call stating the father had followed the foster parents, knew their vehicle’s license plate number, and tried to obtain their home address. The caller also advised that the father said he was following the social worker and would get her and the foster parents. Around this time, the Department received reports the father was harassing a foster care social worker and staff member.

In mid-June, Ginger advised the social worker she did not want to visit with her father or have telephone conversations with him. She also said she did not want to visit with her paternal grandmother.

On June 19, 2002, at the Department’s request, the juvenile court appointed a licensed clinical psychologist, Dr. Alfredo Crespo, to serve as an expert under Evidence Code section 730. The court asked Dr. Crespo to interview Ginger, the father and both of Ginger’s grandmothers, and to provide an assessment which discussed, among other things, the source of Ginger’s fears of her father and whether he posed a threat to Ginger.

On August 1, 2002, Ginger was moved to another foster home. Subsequent reports indicated Ginger liked her new placement.

Between April 2002, when Ginger was removed from the father's custody, and October 2002, the father attended parenting classes. However, his attendance was irregular. In early October, the father enrolled in an outpatient substance abuse program.

On October 14, 2002, Dr. Crespo submitted his report to the court. Dr. Crespo reported that the father had "difficulty with his judgment and that, while he may not represent a *sexual* abuse risk to his daughter on the basis of his registered sexual offender status alone, he lacks the ability to cooperate with authority figures with whom the circumstances force him to come in contact for as long as he remains invested in regaining custody of his daughter." (Original italics.) Dr. Crespo also reported that Ginger expressed fear of her father and said he "sometimes" hit her with a belt. He also reported that, during a telephone conversation he observed between Ginger and her father, "evidence of [Ginger's] underlying anxiety was evident." Dr. Crespo noted that the father had "expressed little sense of his personal responsibility for causing [Ginger's] placement and for contributing to [her] fears"

Dr. Crespo opined that the father's explanation for Ginger's fears—bias instilled by Ginger's maternal grandmother—was not a likely cause because the maternal grandmother did not appear especially interested in gaining custody of Ginger. However, Dr. Crespo also opined that Ginger's fears may be due to her exposure to her foster parents, who have their own reasons for fearing the father. Dr. Crespo concluded by stating that "the present matter appears quite difficult to resolve satisfactorily." He recommended that Ginger develop a "trusting relationship with a competent child psychotherapist who can gradually better determine the source of her currently somewhat mysterious reasons for not wanting contact with her father. In addition, such a therapist may be in a better position than the foster mother to monitor the quality of the father-daughter contact provided that the contacts with the father and minor are changed such that these occur

during therapy visits rather than through public telephone calls which can only further convey to the minor the message, however merited, that her father is a dangerous man.”

On October 17, 2002, the parties appeared in the court for a review hearing and disposition. The court admitted Dr. Crespo’s evaluation into evidence. The father’s counsel stated that the father “fully admits and accepts responsibility for the actions that led to [Ginger’s] replacement” and that he was asking for an opportunity to reunite with her. Counsel also admitted that Ginger was removed from her father’s home because he had misused prescription medication. Counsel advised the court that the father had voluntarily enrolled in a drug rehabilitation program and asked the court to order additional reunification services. Counsel acknowledged the father had received more than 18 months of reunification services before Ginger was placed with him, but claimed that “during much of that period of time he was incarcerated.” Counsel recognized “the clock doesn’t stop running during periods of incarceration,” but urged the court to take that factor into account when deciding whether to order additional reunification services.

The Department’s counsel stated that the father had already received 20 months of family reunification services and nearly three months of family maintenance services, had completed a host of counseling programs, but had still experienced a drug relapse. She also noted that several of Ginger’s placements had been “damaged and fallen apart . . . because of [the father’s] lack of control with his anger and because of threats that he’s made and threatening behavior towards the foster parents.” She asked the court to follow the Department’s recommendations.

Ginger’s counsel joined in the Department’s recommendations and argued against ordering additional reunification services. She noted the father had received the maximum amount of reunification services permitted by law. She stated that, while she did not question the father’s love for his daughter and his desire to get her back, there was “a real question about whether or not the father recognizes the difficulties and the problems that he presents, the problems that need to be addressed.” Ginger’s counsel disputed a contention by the father’s counsel that Ginger had only recently started to

express fear of the father. She claimed “Ginger expressed fear of the father from the very beginning, starting back in April [2002] when she was taken from the home of the father and the grandmother. She continually refused to have visitation.” She also stated that she did not believe Ginger’s fears of the father were caused by her foster parents.

After hearing argument, the court stated it was extremely concerned that Ginger was fearful of her father. The court then found by clear and convincing evidence that Ginger was suffering from severe emotional damage and that there was no reasonable means to protect her short of removing her from her father’s custody. The court found reasonable services had been provided and expressed the belief that there were no additional services it could legally order. The court scheduled a February 13, 2003 hearing for the selection and implementation of a permanent plan for Ginger (§ 366.26). Both Ginger and her father were ordered to attend individual counseling sessions with therapists. The court ordered that the therapist chosen for Ginger be willing to have sessions with both the father and the paternal grandmother to “try and find out why [Ginger] is expressing this fear.” The court ordered monitored visits for both parents and the paternal grandmother. The court directed the Department to submit a report by mid-December 2002 and to include reports from all therapists involved. The court noted that, without reports from the therapists, “there would be no way [the father] could file a 388 petition [for modification based on changed circumstances or new evidence].”

The father filed a writ petition in pro per challenging the court’s order. Because the petition was deficient, we afforded the father an opportunity to amend his petition. After he did so, we issued an order to show cause, advising the parties of our intention to decide the matter on the merits. (Cal. Rules of Court, rule 39.1B(l).) After the Department filed an answer opposing the granting of relief, the father filed a reply.

DISCUSSION

We review the juvenile court’s findings of fact under the substantial evidence test, which requires us to determine whether there is reasonable, credible evidence of solid value such that a reasonable trier of fact could make the challenged findings. (*In re Brian*

M. (2000) 82 Cal.App.4th 1398; *Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470.) In making that determination, we must resolve all conflicts in support of the court's ruling and indulge all legitimate inferences to uphold the court's order. If substantial evidence exists, we must affirm the court's order. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020-1021; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820; *In re Katrina C.* (1988) 201 Cal.App.3d 540, 547; *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.) Whether the court made the correct decision based upon its findings of fact is reviewed under the abuse of discretion standard. (*In re Brian M., supra*, 82 Cal.App.4th at p. 1401, fn. 4; *In re Brequia Y.* (1997) 57 Cal.App.4th 1060, 1068.)

The father's sole contention is that the court should have ordered additional reunification services because he allegedly did not receive any services during the six months he spent in jail between July 2000 and January 2001.⁹ We reject this contention.

As a preliminary matter, the father never complained about the reasonableness of the services he received, not even at the six-month review hearing, which occurred in late March 2001, less than three months after his release from jail. Having failed to object to the reasonableness of the services at that time or any time thereafter, the father cannot be heard to complain more than a year and a half later that he did not receive reasonable services during a relatively short period in the history of this case. (See *In re Kevin S.* (1996) 41 Cal. App.4th 882, 885.)

A parent is generally accorded 12 months of reunification services for a child who is over the age of three. (§ 361.5.) Services can be extended up to a maximum of 18

⁹ In his reply, the father claims he was also asking that Ginger be returned to him. The father cites the fact that, in the Judicial Council's form writ petition, he checked a box marked "Return or grant custody of the child to petitioner." However, neither the petition nor the reply contain any facts or argument to support such a request. In any event, from our independent review of the record, we have concluded that substantial evidence supports the juvenile court's finding at the October 2002 hearing that Ginger could not be returned to the father at that time.

months if the court finds it is likely that the child will be returned to the parent by the 18-month date. (§ 366.21, subd. (f).) In this case, the court terminated reunification services a full 27 months after Ginger was initially detained.

In some cases, courts have permitted reunification services beyond the 18-month statutory deadline. However, those cases involved truly exceptional circumstances. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1015 [Department “failed to make any effort to reunify the incarcerated father and his daughter”]; *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774 [mother hospitalized during most of the reunification period, and after release Department restricted visits]; *In re Daniel G.* (1994) 25 Cal.App.4th 1205 [juvenile court found that reunification services offered to mother were a “disgrace”]; *In re Dino E.* (1992) 6 Cal.App.4th 1768 [no reunification plan was ever developed for the father].)

The father cites one of these cases, *Mark N. v. Superior Court*, *supra*, 60 Cal.App.4th 996, to support his position. In that case, however, the petitioner was incarcerated during almost the entire reunification period and received virtually no services during that time. In contrast, the father was in jail for only the first six months of a period more than two years between Ginger’s detention and the court’s order setting a section 366.26 hearing.

Finally, in addition to reunification services, the father received almost three months of family maintenance services after Ginger was returned to his custody in January 2002. Unfortunately, notwithstanding all the services the father had received, the conditions which resulted in Ginger’s dependency status were not ameliorated. At this point, Ginger’s need for permanence and stability overrides any claim by the father to additional reunification services. (See *In re Marilyn H.* (1993) 5 Cal.4th 295, 307, 309.)

DISPOSITION

The petition for writ of mandate is denied. This opinion is final as to this court forthwith. (Cal. Rules of Court, rule 24(d).)

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BOLAND, J.

We concur:

COOPER, P.J.

RUBIN, J.